

1
2
3
4
5
6 UNITED STATES DISTRICT COURT
7 DISTRICT OF NEVADA

8 * * *

9 DEMETRI ALEXANDER,

Case No. 2:16-cv-00257-RFB-GWF

10 Plaintiff,

ORDER

11 v.

12 NDOC et al.,

13 Defendants.
14

15 This action is a *pro se* civil rights complaint filed pursuant to 42 U.S.C. § 1983 by
16 a state prisoner. On April 7, 2016, this Court issued an order denying Plaintiff's
17 application to proceed *in forma pauperis* because Plaintiff had "three strikes" pursuant
18 to 28 U.S.C. § 1915(g). (ECF No. 6 at 1-2.) The Court informed Plaintiff that if he did
19 not pay the \$400.00 filing fee in full within 60 days of the date of that order, the Court
20 would dismiss the action without prejudice. (*Id.* at 2.) The 60-day period has now
21 expired and Plaintiff has not paid the full filing fee of \$400.00.

22 District courts have the inherent power to control their dockets and "[i]n the
23 exercise of that power, they may impose sanctions including, where appropriate . . .
24 dismissal" of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829,
25 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party's
26 failure to prosecute an action, failure to obey a court order, or failure to comply with
27 local rules. See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for
28 noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir.

1 1992) (dismissal for failure to comply with an order requiring amendment of complaint);
2 *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to comply
3 with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v.*
4 *U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply
5 with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal
6 for lack of prosecution and failure to comply with local rules).

7 In determining whether to dismiss an action for lack of prosecution, failure to
8 obey a court order, or failure to comply with local rules, the court must consider several
9 factors: (1) the public's interest in expeditious resolution of litigation; (2) the court's need
10 to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy
11 favoring disposition of cases on their merits; and (5) the availability of less drastic
12 alternatives. *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*,
13 833 F.2d at 130; *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

14 In the instant case, the Court finds that the first two factors, the public's interest in
15 expeditiously resolving this litigation and the Court's interest in managing the docket,
16 weigh in favor of dismissal. The third factor, risk of prejudice to Defendants, also
17 weighs in favor of dismissal, since a presumption of injury arises from the occurrence of
18 unreasonable delay in filing a pleading ordered by the court or prosecuting an action.
19 See *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor – public
20 policy favoring disposition of cases on their merits – is greatly outweighed by the factors
21 in favor of dismissal discussed herein. Finally, a court's warning to a party that his
22 failure to obey the court's order will result in dismissal satisfies the “consideration of
23 alternatives” requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33;
24 *Henderson*, 779 F.2d at 1424. The Court's order requiring Plaintiff to pay the full filing
25 fee within 60 days expressly stated: “It is further ordered that this action will be
26 dismissed without prejudice unless Plaintiff pays the \$400.00 filing fee in full within sixty
27 (60) days from the date of this order.” (ECF No. 6 at 2.) Thus, Plaintiff had adequate
28

1 warning that dismissal would result from his noncompliance with the Court's order to
2 pay the full filing fee within 60 days.

3 It is therefore ordered that this action is dismissed without prejudice based on
4 Plaintiff's failure to pay the \$400.00 filing fee in compliance with this Court's April 7,
5 2016, order.

6 It is further ordered that the motion to file an extended complaint (ECF No. 2) is
7 denied as moot.

8 It is further ordered that the Clerk of Court shall enter judgment accordingly.

9
10 DATED THIS 16th day of August, 2016.

11
12 

13 RICHARD FRANKLIN BOULWARE II
14 UNITED STATES DISTRICT JUDGE
15
16
17
18
19
20
21
22
23
24
25
26
27
28